

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER**

**IN THE MATTER OF:**

**E & F Custom Pumping, Inc.**

**ADMINISTRATIVE CONSENT  
ORDER  
NO. 2007-AFO-17**

**TO: E & F Custom Pumping, Inc.  
c/o Joseph E. Halbur, Reg. Agent  
621 N. Clark Street  
Carroll, Iowa 51401**

**I. SUMMARY**

This Administrative Consent Order (Order) is entered into between E & F Custom Pumping, Inc. and the Iowa Department of Natural Resources (Department) for the purpose of resolving violations of Iowa's requirements pertaining to manure application and control. In the interest of avoiding litigation, the parties have agreed to the provisions set forth below.

Any questions or response regarding this Order should be directed to:

**Relating to technical requirements:**

Daniel Olson, Field Office No. 4  
Iowa Department of Natural Resources  
1401 Sunnyside Lane  
Atlantic, Iowa 5022  
Ph: 712-243-1934

**Relating to legal matters**

Randy Clark, Attorney II  
Iowa Department of Natural Resources  
Wallace State Office Building  
Des Moines, Iowa 50319-0034  
Ph: 515/281-8891

**Payment of penalty to:**

Iowa Department of Natural Resources  
Wallace State Office Building  
502 East 9<sup>th</sup> Street  
Des Moines, Iowa 50319-0034

**II. JURISDICTION**

This Order is issued pursuant to the provisions of Iowa Code subsections 455B.138(1) and 455B.175(1), which authorize the Director to issue any Order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1,

47424 MAY 17 '07 AM 10:32

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER**

**ISSUED TO: E & F CUSTOM PUMPING, INC.**

Iowa Code chapter 459, subchapter III, and the rules adopted or permits issued pursuant thereto; and Iowa Code sections 455B.109 and 459.103(3), and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

**III. STATEMENT OF FACTS**

1. At all times relevant to this Order, SWIne USA owned and operated a confinement (Sharpsburg 13) located in the NW¼ of the SW¼ of Section 11 and the NE¼ of the SE ¼ of Section 10, of Marshall Township (T69N, R33W), Taylor County, Iowa. The confinement operation consisted of 4 deep-pit wean-to-finish barns and had a capacity of 3,840 finishing pigs (1,536 AU/ 526,080 lbs. AWC). Subsequent to the time in which the violations occurred which are the subject of this Order, the facility was sold to Whitestone Farms.

2. On or about December 2, 2003, employees of E & F Custom Pumping, Inc. applied manure from the Sharpsburg 13 facility, to land in Section 4, Grant Township (T69N, R32W), Taylor County, Iowa.

3. On December 2, 2003, Field Office 4 (FO4) received a complaint that alleged surface application of manure in the area had resulted in a "horrible" odor. On December 3, 2003, Daniel Olson, an Environmental Specialist with FO4, investigated the complaint. It was observed that manure had been applied within 438 feet of 1675 Utah Ave, which is an occupied residence not owned by the titleholder of land to which manure was applied. In some areas adjacent to a buffer strip manure was incorporated within 24 hours but manure had not been incorporated in areas located less than 750 feet from the above-referenced residence.

4. An unnamed tributary (tributary) to the Hog Branch of the East Fork 102 River originates within the manure application area. Following the application of manure, snow melt, occurred and Mr. Olson observed that the resulting runoff into the tributary was cloudy in appearance. On December 3, 2003, samples from the tributary were analyzed with a field test kit. Additional samples were sent to The University of Iowa Hygienic Laboratory. The results are consistent with the observation that manure discharged into the tributary and are summarized as follows:

- i. Total Biochemical Oxygen (Demand 5 day): 80mg/L
- ii. Membrane Fecal Coliform: 5,200/100ml
- iii. Ammonia Nitrogen as N: 9.3 mg/L

5. Mike Erwin, the Environmental Resource Manager for Bell Farms, was contacted by Mr. Olson at the Sharpsburg 13 facility. Mr. Erwin confirmed that E & F Custom Pumping, Inc. had applied manure from the facility to the land described above. When contacted by Mr. Olson the owner of the land where manure was applied explained that the commercial applicators did not apply manure to a buffer strip along the tributary and injected manure for an additional width of 20 feet landward of the buffer strip.

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: E & F CUSTOM PUMPING, INC.  
IV. CONCLUSIONS OF LAW**

1. Iowa Code section 455B.186 prohibits the discharge of pollutants into waters of the State, except for adequately treated pollutants discharged pursuant to a permit from the Department. A permit has not been issued for this facility; thus, the foregoing facts establish that this provision has been violated.

2. Iowa Code section 459.103 requires the Environmental Protection Commission to adopt rules related to the construction or operation of animal feeding operations, including minimum manure control requirements. The Commission has done so at 567 IAC chapter 65.

3. Iowa Code section 459.204 and 567 IAC 65.3(3) require that manure be applied at least 750 feet from a residence not owned by the titleholder of the land to which manure was applied. The above facts show non-compliance with this requirement.

4. Iowa Code subsection 459.311(2) and 567 IAC 65.2(7) require that all manure removed from an animal feeding operation or its manure control facility be land applied in a manner which will not cause surface or groundwater pollution. Pursuant to 567 IAC 65.19(8)"b", commercial manure applicators are required to comply with these and all other minimum manure control requirements. The foregoing facts establish that these provisions were violated.

**V. ORDER**

THEREFORE, the Department hereby orders and E & F Custom Pumping, Inc. consents to pay a penalty of \$4,500.00 to the Department within 30 days of the date the Director signs this Order.

**VI. PENALTY**

1. Iowa Code sections 455B.191 and 459.603 authorize the assessment of civil penalties of up to \$5,000.00 per day for each violation of water quality laws, regardless of fault; more severe criminal sanctions are also provided for negligent and intentional violations.

2. Pursuant to the provisions of Iowa Code section 455B.109 and 567 IAC chapter 10, which authorize the Director to assess administrative penalties, a penalty of \$4,500.00 is assessed. The penalty shall be paid within 30 days of the date the Director signs this Order. The administrative penalty is determined as follows:

a. Economic Benefit. The Department has no evidence that any financial savings resulted from this incident. Therefore, no amount is assessed for this factor.

b. Gravity of the Violations. One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for the type of violation. As indicated above, substantial civil penalties are authorized by statute.

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER**

**ISSUED TO: E & F CUSTOM PUMPING, INC.**

Despite the high penalties authorized, the Department has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. A maximum of \$3,000.00 per day can be assessed for this factor for each violation, subject to the \$10,000.00 maximum for an administrative penalty. Surface application of manure without due consideration to weather factors and local site characteristics can and did cause pollutants to reach a water of the state which threatened the environment; \$1,500.00 is assessed for this violation. The public health was threatened due to the failure to comply with the required separation distance from a residence for manure application; \$1,000.00 is assessed for this violation. Therefore, a penalty of \$2,500.00 is assessed for this factor.

c. Culpability. A certified manure applicator is charged with the responsibility of knowing and understanding the separation distance requirement and the surface pollution prohibition summarized in Division IV, paragraphs 3 and 4, above. Multiple rule and statutory provisions were violated and \$1,250.00 per day should be assessed for this factor for each violation. Therefore, \$2,500.00 is assessed for this factor.

d. Mitigating Factors. It appears that E & F Custom Pumping, Inc. made some effort to minimize the likelihood of runoff from the application area. Therefore, the penalty is reduced by \$500.00.

**VII. WAIVER OF APPEAL RIGHTS**

Iowa Code sections 455B.138(1) and 455B.175(1), and 561 IAC 7.5(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Environmental Protection Commission. This Order is entered into knowingly by and with the consent of E & F Custom Pumping, Inc.. By signature to this Order, all rights to appeal this Order are waived by E & F Custom Pumping, Inc..

**VIII. NONCOMPLIANCE**

Failure to comply with this Order may result in the imposition of further administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.191 and 459.603. Compliance with Division "V. Order" of this Order constitutes full satisfaction of all requirements pertaining to the violations described in Division IV of this Order. The Department reserves the right to bring enforcement action or to request that the Attorney General initiate legal action to address other violations not described in this Order but which may arise from the facts summarized in Division III of this Order.

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: E & F CUSTOM PUMPING, INC.

Alan Friedman Dated this 14<sup>th</sup> day of  
E & F CUSTOM PUMPING, INC. at Friedman, Inc. May, 2007.

Richard A. Leopold Dated this 11 day of  
RICHARD A. LEOPOLD, DIRECTOR  
IOWA DEPARTMENT OF NATURAL RESOURCES June, 2007.

#59356; Field Office 4; Randy Clark; Gene Tinker; EPA; VIII.D.1.a, D.2.b